

BLD-114

February 28, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 18-3606

EDWARD THOMAS KENNEDY, Appellant

VS.

ROBERT EVANCHICK, et al.

(M.D. Pa. Civ. No. 3:18-cv-00777)

Present: AMBRO, KRAUSE, and PORTER, Circuit Judges

Submitted is by the Clerk for possible dismissal due to a jurisdictional defect in the above-captioned case.

Respectfully,

Clerk

ORDER

The appeal is dismissed for lack of appellate jurisdiction. Appellate jurisdiction attaches over an appeal from a final order under 28 U.S.C. § 1291, from a collateral order under the doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949), from an appropriate order relating to the grant or denial of injunctive relief under 28 U.S.C. § 1292(a), and over questions certified pursuant to Federal Rule of Civil Procedure 54(b). See In re Briscoe, 448 F.3d 201, 211 (3d Cir. 2006). This appeal is a challenge to an order denying a motion to recuse. We do not have appellate jurisdiction to consider such an appeal at this time. See In re Sch. Asbestos Litig., 977 F.2d 764, 774 (3d Cir. 1993); see also Pittsburgh v. Simmons, 729 F.2d 953, 954 (3d Cir. 1984) (“A refusal to recuse is reviewable only after final judgment.”).

To the extent that we may construe Appellant’s notice of appeal as a petition for writ of mandamus, we may review the District Court’s refusal to recuse pursuant to 28 U.S.C. § 455. See In re Antar, 71 F.3d 97, 101 (3d Cir. 1995), overruled on other grounds by Smith v. Berg, 247 F.3d 532, 534 (3d Cir. 2001). However, we conclude that

the extraordinary remedy of a writ of mandamus is not warranted in this matter. See In re Kensington Int'l Ltd., 368 F.3d 289, 301 & n.12 (3d Cir. 2004); In re United States, 666 F.2d 690, 694 (1st Cir. 1981).

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: March 11, 2019
Lmr/cc: Edward T. Kennedy



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate